



AGENDA DATE: 2/14/01  
AGENDA ITEM: Late Starter A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
*Two Gateway Center*  
*Newark, NJ 07102*

IN THE MATTER OF THE PETITION	)	<u>OFFICE OF THE ECONOMIST</u>
OF NUI CORPORATION d/b/a	)	ORDER
ELIZABETHTOWN GAS COMPANY	)	AUTHORIZING FORMATION
FOR APPROVAL OF THE FORMATION	)	OF A HOLDING COMPANY
OF A HOLDING COMPANY	)	DOCKET NO. GM00010067

(SERVICE LIST ATTACHED)

BY THE BOARD:

NUI Corporation ("NUI" or "Petitioner") d/b/a Elizabethtown Gas Company, a public utility of the State of New Jersey subject to the jurisdiction of the Board of Public Utilities ("Board"), filed a petition on January 31, 2000, pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10, and N.J.A.C. 14:1-5.10, requesting authorization and approval of an Agreement and Plan of Exchange, which will result in a technical change of ownership and control of NUI and its utility operating divisions, and the formation of an exempt holding company pursuant to the Public Utility Holding Company Act of 1935.

**BACKGROUND**

On March 23, 1999, the Board of Directors of NUI unanimously approved the formation of a holding company to own all of the stock of NUI, which formation will be accomplished through an Agreement and Plan of Exchange ("Exchange Agreement"). Pursuant to that Exchange Agreement, NUI will form a wholly owned subsidiary, NUI Holding Company. Thereafter, each share of NUI common stock will be exchanged for a share of NUI Holding Company common stock with the result that NUI Holding Company will become the owner of all of the outstanding common stock of NUI and each holder of NUI common stock will become the owner of an equal number of shares of NUI Holding Company common stock. Execution of the Exchange Agreement is subject to certain conditions including: (1) the shareholders of NUI must approve the formation of the holding company, (2) NUI must receive all necessary regulatory approvals, including the Board's, (3) NUI must receive a satisfactory ruling from the Internal Revenue Service or an opinion of tax counsel regarding the tax consequences of the transaction, and (4) NUI must receive approval of the New York Stock Exchange for the listing of NUI Holding Company common stock.

According to the Petitioner, NUI Holding Company has been formed solely for the purpose of effectuating the Exchange Agreement. NUI Holding Company has been incorporated under the laws of the State of New Jersey. NUI Holding Company maintains its principal business office at 550 Route 202-206, P.O. Box 760, Bedminster, New Jersey 07921-0760. According to the Petitioner, it has only nominal assets and liabilities, and has not had any business transactions.

At the time of the filing of the petition, NUI had regulated utility businesses in New Jersey, New York, Pennsylvania, North Carolina, Maryland, and Florida.<sup>1</sup> Additionally, NUI had one first tier wholly-owned non-utility subsidiary, NUI Capital Corporation ("NUI Capital"), a Florida corporation. NUI Capital owns eight unregulated subsidiaries: NUI Energy, Inc., a Delaware corporation that markets energy services to retail and commercial customers; NUI Energy Brokers, Inc., a Delaware corporation that provides wholesale energy trading and related services to other utilities and energy marketing companies; Utility Business Services, Inc., a New Jersey corporation that provides billing and customer information systems and services to investor-owned and municipal utilities and third-party energy providers; NUI Environmental Group, Inc., a New Jersey corporation that is developing a sediment processing facility to serve the harbor of New York/New Jersey; NUI Energy Solutions, Inc., a Delaware corporation that provides energy management and consulting services; International Telephone Group, a New Jersey corporation that provides various telecommunications products and services; NUI International, Inc., a Delaware corporation formed to explore international business opportunities; and Sales Management, Inc., a Delaware corporation, which owns a forty-nine percent ownership interest in TIC Enterprises, LLC. TIC Enterprises is a Delaware limited liability corporation that recruits, trains and manages sales professionals, and serves as a sales and marketing representative for various businesses.

Once the Exchange Agreement is implemented, NUI intends to transfer to NUI Holding Company its interest in NUI Capital, along with NUI Capital's unregulated subsidiaries. At the completion of the proposed transaction, NUI Holding Company will have two first tier subsidiaries: NUI Capital and NUI Utilities. The regulated utility operations of NUI will continue in a single corporate entity called NUI Utilities. Thus, as a result of the proposed transaction, NUI Utilities will not directly or indirectly own the outstanding stock of any unregulated subsidiary after the holding company formation.

The directors and officers of NUI, who are serving at the time of the Holding Company formation, will continue in such capacities after completion of the proposed transaction. The principal executive officers of the Holding Company will be persons holding executive positions with NUI, and, at least initially, will continue to hold such offices with the Holding Company.

The authorized capital stock of NUI Holding Company consists of 30,000,000 shares of common stock and 5,000,000 shares of preferred stock no par value. As of December 31, 2000, the authorized capital stock of NUI consisted of 30,000,000 shares of common stock (no par value), of which 12,807,111 were issued and outstanding, and 5,000,000 shares of preferred stock (without par value) of which no shares are issued and outstanding.

#### PROCEDURAL HISTORY

NUI filed its petition in this matter on January 31, 2000. The parties to this proceeding are NUI, the Staff of the Board of Public Utilities and the Division of the Ratepayer Advocate. Discovery

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<sup>1</sup> On October 5, 2000, NUI announced that it had agreed to sell its New York and Pennsylvania operations to C&T Enterprises, Inc. of Pennsylvania. That matter is not at issue here.

was conducted by the parties over a period of several months and NUI provided all of the data requested. Numerous discussions were held between the parties resulting in the execution of the attached Stipulation of Settlement.

## FINDINGS AND DISCUSSION

1. The Board's traditional regulatory powers will provide all the enforcement that the Board will need to assure that NUI Utilities' operations, employees and customers remain the first priority, and that the formation of the Holding Company does not adversely affect the utility, its customers, employees, natural gas competition or the provision of safe, adequate and proper utility service. The Board's regulatory tools will be as effective when applied to NUI Utilities as part of a holding company structure as they would be if NUI were to continue in its current form.

2 The record shows that the proposed transaction will not result in any changes in rates charged to utility customers, in service policies to utility customers, in the directors or officers of the utilities, employees of the utilities, or in any policies with respect to utility operations, financing, accounting, capitalization, depreciation, maintenance or any other matter regarding NUI's utility operations. NUI will continue to maintain its books and records in accordance with the appropriate Uniform System of Accounts as prescribed by the Board. Moreover, the jurisdiction of the Board will not be impaired as a result of the proposed holding company formation. Therefore, the Board FINDS that the formation of the holding company by NUI is not contrary to the public interest.

3. The Board is therefore of the opinion that the conditions described below, when viewed in conjunction with the Board's existing statutory authority, ensure that the Board can fully discharge its jurisdictional responsibilities which bear upon the provision of safe, adequate and proper utility services while allowing NUI Holding Company's unregulated subsidiaries to operate in the marketplace, and to contribute to the economic growth of New Jersey.

4. The Board, after investigation, and having considered the record and exhibits submitted in this matter, HEREBY FINDS that:

- (1) The proposed transfer of stock and formation of a holding company are made in accordance with law and are not contrary to the public interest;
- (2) The proposed conditions set out below are reasonable and appropriate, and, in conjunction with existing statutes, provide this Board with sufficient means and authority by which to properly regulate utility operations;
- (3) The proposed holding company formation will have no adverse impact upon the rates charged to utility customers, the employees of the utility, natural gas competition, or upon NUI Utilities' ability to provide safe, adequate and proper utility services, and

5. The Board APPROVES the formation of NUI Holding Company. The Board AUTHORIZES NUI to record on its books and records the transfer of all issued and outstanding shares of its common stock, and to form a public utility holding company in accordance with the Exchange Agreement. Additionally, the Board HEREBY ADOPTS the Stipulation of Settlement incorporating the terms thereof into this decision as it fully set forth at length herein, subject to the following conditions:

1. NUI Holding Company shall inform the Board of the date on which the Exchange Agreement shall have been consummated.

2. Subject to the execution, where appropriate, of acceptable confidentiality agreements, copies of the tax returns of Elizabethtown Gas Company, as well as the tax returns of any entity consolidated with Elizabethtown Gas Company, for the purpose of Federal Income Taxes, shall be made available to the Board to the extent the Board determines that the information contained therein is necessary to resolve any regulatory or financial issues impacting Elizabethtown Gas Company.

3. Subject to the execution, where appropriate, of acceptable confidentiality agreements, the parties to this proceeding shall be provided reasonable access to the books and records of NUI Holding Company or any of its regulated or unregulated subsidiaries. Nothing in this provision shall be construed so as to limit the authority of the Board pursuant to N.J.S.A. 48:2-16 et seq.

4. There shall be no change in Elizabethtown Gas Company's books or methods of regulatory accounting without prior approval as required by law. Elizabethtown Gas Company shall continue to maintain its books and records in accordance with the Board-approved Uniform System of Accounts or as otherwise prescribed by the Board.

5. NUI Holding Company shall allocate costs to or from its public utility subsidiaries using current methodologies or those as may in the future be authorized by the Board. NUI Utilities shall continue to record costs and any allocations of costs among its various divisions in sufficient detail to allow the Board to analyze, evaluate and render a determination as to their fairness and reasonableness for ratemaking purposes.

6. All expenses for NUI Holding Company's corporate activities shall be separately identified, accounted for separately for accounting purposes, and "below the line" for ratemaking purposes. To the extent that NUI Utilities seeks to recover any of NUI Holding Company's corporate expenses from Elizabethtown Gas Company's ratepayers in base tariff rates, NUI Utilities shall specifically identify these expenditures to enable the Board to make a determination as to the appropriateness and reasonableness of reflecting those expenditures in rates.

7. No direct or indirect costs associated with this transaction (e.g., financial, legal, severance payments and/or investment services) shall be passed on to, recovered from, or funded by customers of Elizabethtown Gas Company.

8. NUI Utilities shall maintain financial, statistical and accounting records in sufficient detail to enable the Board to evaluate, analyze and consider Elizabethtown Gas Company on a stand-alone basis.

9. NUI Holding Company shall continue to devote the highest level of management oversight to its non-utility diversified activities.

10. NUI Utilities shall seek Board approval in accordance with N.J.S.A. 48:3-7.1 prior to implementing a contract for the provision of administrative support services to Elizabethtown Gas Company. All transactions and allocations exceeding, in the aggregate, \$25,000 annually between Elizabethtown Gas Company and NUI Holding Company's other divisions and subsidiaries shall be reported annually by NUI at the time of the filing of its annual report to the Board.

11. NUI Utilities shall file quarterly reports, including balance sheets and income statements in sufficient detail to enable the Board to review the financial results of the combined NUI Holding Company, as well as each of its separate divisions, on an ongoing basis. NUI Utilities shall provide on a quarterly basis the same information supplied to the Board of Directors of NUI Holding Company concerning the status of the investments of NUI Capital Corporation. Due diligence material on any acquisition by NUI Holding Company and/or NUI Capital Corporation shall be made available to Board Staff for informational purposes.

12. NUI Holding Company shall maintain a corporate investment policy and a level of capital investment sufficient for Elizabethtown Gas Company to ensure long-term safe, adequate and proper utility service. NUI Holding Company shall promptly notify the Board of any significant event that may affect its financial integrity, such as having its equity securities downgraded or being placed on a "ratings watch list" by a securities rating firm. NUI Holding Company shall file reports prepared by bond and equity analysts no less frequently than quarterly, which discuss the financial performance and/or the financial integrity of NUI Holding Company.

13. The Board shall continue to exercise its full authority to review in detail the capital structure of NUI Utilities and Elizabethtown Gas Company, including ratios and costs of debt and equity in order to insulate New Jersey ratepayers from any adverse effects from non-New Jersey operations and events. NUI Holding Company shall not seek to recover from Elizabethtown Gas Company's ratepayers any costs, either directly or indirectly, associated with its utility operations in other states or with any of its unregulated operations wherever located.

14. NUI Utilities shall maintain an Advisory Board of Directors for Elizabethtown Gas Company. For a minimum of three years following the date of this Order, a majority of the members appointed to serve on the Advisory Board shall be New Jersey residents. The minutes of the meetings of the Advisory Board shall be made available to the Board upon request. NUI Holding Company shall make New Jersey residency and people familiar with New Jersey interests important considerations in appointing directors to serve on the Board of NUI Utilities.

15. NUI Utilities shall produce the books and records of its other divisions as provided for in N.J.S.A. 48:3-7.8, upon written notice from the Board.

16. The assets of Elizabethtown Gas Company shall not be pledged to support any financing related to NUI Utilities' other divisions or its subsidiaries unless approved by the Board pursuant to N.J.S.A. 48:3-7.

17. This Order shall not be construed as approval by the Board of any value or consideration related to this transaction.

18. The Board has a continuing regulatory concern with relations among holding companies and their affiliates and subsidiaries. NUI Utilities shall comply with all applicable Board requirements as specified in the Board's Affiliate Relations Standards currently codified at N.J.A.C. 14:4-5.1 et seq. Copies of compliance reports, as currently required by N.J.A.C. 14:4-5.7(d), shall be provided to the Ratepayer Advocate.

19. All current Elizabethtown Gas Company employees shall remain in their current positions with no change in title or function as a result of this transaction. NUI has assured the Board that it is committed to retaining its employees in all jurisdictions and that the change in corporate structure will not impact job functions or titles.

20. The formation of, and transition to, NUI Holding Company shall not have an impact on the Board's regulatory oversight of Elizabethtown Gas Company. Elizabethtown Gas Company shall remain, after the holding company structure is implemented, subject to all of the Board's regulatory requirements.

21. This Order shall not affect or in any way limit the exercise of the authority of the Board in any future petition or in any proceeding with respect to rates, franchises, services, financing, capitalization, depreciation, accounting, maintenance, operations or any other matter affecting Elizabethtown Gas Company.

22. Any transfer of assets by Elizabethtown Gas Company or NUI Utilities relating to Elizabethtown Gas Company shall be subject to the Board's jurisdiction pursuant to N.J.S.A. 48:3-7.

23. There shall be no commingling of cash between NUI Utilities and NUI Capital. If NUI Capital shall fund operations, capital additions or investments by external borrowing, any such borrowing or any commitments by NUI Capital or its subsidiaries must be non-recourse to NUI Utilities and may not provide for cross-default to, or for credit support from NUI Utilities, unless prior approval is granted by the Board.

24. The corporate headquarters of NUI Utilities, NUI Holding Company and NUI Capital are located in New Jersey, and the Board acknowledges the present intentions of these companies to remain in New Jersey. Elizabethtown Gas Company shall file for approval by the Board if it seeks to move its headquarters from New Jersey.

25. The record indicates that the proposed holding company formation will not result in any anticipated change in the Petitioner's dividend policy. While the distribution of dividends, absent abuse, is best left to the discretion of the Holding Company's Board of Directors, the continuation of a sound and reasonable dividend policy is a matter of great interest and concern to this Board. Accordingly, said policy shall continue to be subject to the Board's authority as set out in Title 48 and shall be reviewed by the Board in appropriate proceedings.

DATED February 20, 2001

BOARD OF PUBLIC UTILITIES  
BY:

[SIGNED]  
HERBERT H. TATE  
PRESIDENT

[SIGNED]  
FREDERICK F. BUTLER  
COMMISSIONER

Having been sworn in as Acting Commissioner on February 13, 2001, I have not had an adequate opportunity to review this matter prior to the Board's February 14, 2001 Agenda Meeting, and I therefore abstain from rendering a decision.

[SIGNED]  
CAROL J. MURPHY  
ACTING COMMISSIONER

ATTEST:

(SIGNED)  
FRANCES L. SMITH  
SECRETARY